UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 16 2012

REPLY TO THE ATTENTION OF: E-19J

Peter Taylor
Project Coordinator
Superior National Forest
8901 Grand Avenue Place
Duluth, Minnesota 55808

Re: Comments on the Final Environmental Impact Statement and Record of Decision for the Proposed Federal Hardrock Mineral Prospecting Permits Project on the Superior National Forest, Cook Lake, St. Louis, Koochiching Counties, Minnesota - EIS No. 20120170 and Adoption of Final EIS by Bureau of Land Management - EIS No. 20120171

Dear Mr. Taylor:

The U.S. Environmental Protection Agency has reviewed the U.S. Forest Service's (USFS) Final Environmental Impact Statement (EIS) and Record of Decision (ROD) for the above-mentioned project. Our comments in this letter are provided in accordance with our responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act.

Pursuant to the Bureau of Land Management (BLM) having received applications to conduct mineral exploration drilling and geophysical activities on federally-owned minerals within the Superior National Forest (SNF), USFS and BLM identified the need to consider issuing hardrock mineral prospecting permits on the SNF. USFS produced a Draft EIS to analyze whether mineral exploration: a) can be conducted in an environmentally-sound manner; and b) is consistent with the goals, objectives, and standards defined in the 2004 SNF Land and Resource Management Plan. EPA provided comments to the Draft EIS in our letter dated June 17, 2011.

The Draft EIS analyzed impacts from the No Action Alternative and four action alternatives. Alternative 2 was identified as the Proposed Action, and Alternative 4 was identified as the agency-preferred alternative. The ROD indicates that Alternative 4 was selected because it best addresses the balance between resource use and resource protection, and responds to the noise issue analyzed in the Final EIS and other concerns raised in public comment.

Based on our review of the Draft EIS and prospecting permit applications and operating plans, EPA had assigned a rating of "Environmental Concerns – Insufficient Information," or "EC-2" to the document. This rating was based on impacts to aquatic resources, air quality, noise, light, and visitor use. Additional concerns included environmental justice and threatened and

endangered wildlife species. We provided detailed comments outlining our issues and recommendations.

The Final EIS addressed our Draft EIS comments concerning fencing at sump pits, aquatic passages, air quality, noise, environmental justice and economics, threatened and endangered wildlife, and financial assurance. USFS adequately responded to our concerns about diesel emissions and other air pollutants. Because ultra-low sulfur diesel is mandated for non-road use, EPA is satisfied that the vehicles and equipment operating for this project will utilize that fuel. In addition, USFS has indicated that the use of diesel engines on this project is such that an idle-reduction policy is not necessary, or will not have an appreciable impact. USFS is not required to mandate the use of exhaust controls on older diesel vehicles and equipment that will operate under this project. We reiterate several of our Draft EIS comments concerning the use of tanks, historic impact to wetlands, temporal loss of wetlands, light impacts, and visitor use for the reasons stated below.

Water Resources

Our Draft EIS comments recommended USFS require the use of tanks at all drilling sites. After careful review of the responses to comments contained in Appendix J, we reiterate this comment. According to the Final EIS, sump pits are expected to be constructed within glacial soils, and drill cuttings are proposed to be permanently stored in the sump pits. This creates a potential for sulfide oxidation of the drill cuttings in the sump pits. Because of the variable hydraulic conductivity rates of glacial soils, we are concerned that water flowing through the sump pit is likely to flow down-gradient via groundwater to the nearest surface water body, increasing that surface water body's sulfate concentration. As a measure to avoid potential water contamination, we recommend using tanks for every drilling operation and disposing of drill cuttings in an appropriately-lined landfill.

Because surface water bodies located on USFS land will need to meet applicable water quality standards for sulfate in surface waters bearing wild rice (10 mg/L) and groundwater and non-wild rice-bearing surface waters (250 mg/L), we recommend USFS monitor surface water bodies down-gradient of sump pits if tanks are not used. However, the use of tanks would preclude the need for surface water monitoring to ensure applicable water quality standards are met.

Wetlands

Our Draft EIS comments recommended USFS analyze potential wetland impacts by providing a quantitative review of wetland impacts that occurred as a result of exploratory drilling during the past five years to provide the reviewer with a better understanding of the extent of wetland impacts from similar activities. We suggested the analysis include a discussion focused on wetland habitat recovery from temporary impacts of road/landing construction and/or drill pad construction. After careful review of the responses to comments contained in Appendix J, we reiterate this comment.

The Final EIS included several conclusions as a result of site surveys (Appendix G):

"1. Overall, the elements of the wetland complex (soils, hydrology, water quality, and vegetation) were not significantly impacted by the drilling activity. Ecosystem function had

not been impaired. The vegetation had changed because of the occupancy, but was on a trajectory towards pre-disturbance conditions.

2. The proposed stipulations described in the Federal Mineral Prospecting Permits Draft Environmental Impact Statement (PPDEIS) would provide greater resource protection than the controls used for the observed drilling sites.

3. Monitoring of the drilling activity remains a very important component to managing the temporary effects of exploratory drilling activity. Monitoring is one of the tools the SNF has to ensure that stipulations and mitigations proposed in the PPDEIS will be followed and effective in minimizing environmental impacts."

The Final EIS indicated that disturbed lowland areas are vegetated with native species that regenerated naturally from adjacent seed sources. Nonnative plant species were not observed at the lowland sites.

Based upon this review, USFS determined that supplemental plantings will not generally be required and invasive plant species control has not been needed. Mitigation measures beyond those described in the stipulations of the Final EIS are not anticipated. USFS also determined "that ecosystem function had not been impaired" (Rye, 2012b). Monitoring of past prospecting activity has shown that the effects of the prospecting activities were minor, temporary and did not result in significant cumulative impacts.

While this provides a qualitative description of impacts, we reiterate our Draft EIS comment that a quantitative analysis would have provided reviewers with a more definitive idea of the extent of temporary wetland impacts and would have improved the wetlands section of the EIS.

We also requested consideration of mitigation for temporal loss of wetlands functions and values at drill sites and/or access roads open for more than one season, particularly for forested wetlands where the trees will require several years to grow back. Based on the rationale as stated above, USFS does not feel mitigation for temporal loss is necessary. We reiterate our Draft EIS recommendation for mitigation and suggest such mitigation could be accomplished via forest-wide wetland restoration programs currently underway. Even though expanding current restoration programs by a commensurate percentage to compensate for temporal loss of wetlands functions and values might not result in mitigation in-kind, it would result in overall wetland enhancement.

Visitors

The following concerns, outlined in EPA's comments on the Draft EIS, have been sufficiently incorporated into the Final EIS:

- Definitions for low and high recreation use;
- Data and estimates on visitor use by season; and
- Discussion of potential impacts to local businesses from displacement of visitors.

EPA acknowledges the discussion on public notification. We understand that USFS could be notified of drilling operations as little as two weeks before drilling operations commence. EPA supports the notion that any form of public notification could mitigate some impacts to recreational users. EPA is concerned that members of the public who are not aware of drilling operations will not even know to call USFS office to inquire about the timing of drilling operations, as USFS suggests they can do. Therefore, EPA retains its comments that USFS should commit to posting notice of drillings on its websites and at USFS facilities as soon as possible, even if it is as little as two weeks in advance, Additionally, we retain our recommendation that USFS commit to honoring reservations, when available, for those visitors to SNF that find impacts from drilling operations too much of a nuisance.

Light

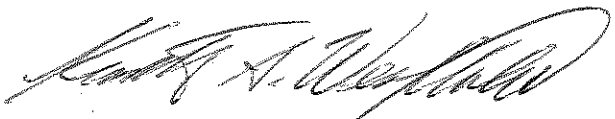
EPA acknowledges USFS's inclusion of light impacts and commitment to mitigation in the Final EIS. However, EPA cannot validate USFS's argument that other light sources, such as those emanating from Ely, will have greater impacts to forest users (including wildlife) than that of drilling rig operations. Because Ely is a populated town, light pollution is expected. Because the drilling operations would take place in a forest setting, where wildlife lives and people go to experience remoteness, night-time light should not be an anticipated part of the surroundings. The addition of light experienced by an overnight visitor to the forest is an anticipated new impact as a result of the prospecting operations. Light coming from towns like Ely is irrelevant to the argument and does not preclude USFS from analyzing light, given it is an anticipated new impact.

Further, EPA questions USFS's interpretation of the cited CEQ NEPA implementing regulations (40 CFR 1502.2(b)). In EPA's comment letter on the Draft EIS, we noted that there was no discussion of light impacts in the Draft EIS. USFS correctly interprets CEQ guidance to mean that for every impact there should be a proportional discussion and that impacts with less significance should have a less-than-significant discussion in the EIS. There are several categories of impacts that were considered to have a small impact, but still received a lengthy discussion in the Draft EIS (i.e., environmental justice). Based on information provided in the Final EIS, we recognize that, with the added mitigation stipulation RV-8, impacts to forest users and wildlife will be less-than-significant. Therefore, we believe there should have been at least a *less-than-significant* discussion of impacts from artificial light in the Draft EIS. In EPA's Draft EIS comment package, we did not suggest there should be a significant discussion of impacts from artificial light, rather we suggested there should have been *any* discussion of impacts from artificial light. Even though light impacts, similar to noise impacts, are not new impacts within the SNF, those impacts should have been included in the EIS.

We appreciate the opportunity to review Final EIS and ROD. If you have any questions concerning these comments, please contact me or individual staff. Questions concerning water resources, noise or threatened and endangered wildlife species can be directed to Kathy Kowal ((312) 353-5206 or kowal.kathleen@epa.gov), air quality to Tony Maietta ((312) 353-8777 or

maietta.anthony@epa.gov), and light impacts, visitor use or environmental justice to Elizabeth Poole ((312) 353-2087 or poole.elizabeth@epa.gov).

Sincerely,



Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

cc: James McDonald, Regional Environmental Coordinator, USFS, Milwaukee, Wisconsin
Mark Storzer, Bureau of Land Management, Milwaukee, Wisconsin